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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BYRON JULIOUS WOOTEN,

Defendant and Appellant.

F055044

(Super. Ct. No. BF110280A)

**ORDER MODIFYING OPINION AND  
DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

**THE COURT:**

It is ordered that the opinion filed herein on August 21, 2009, be modified as follows:

1. On page 7, the third sentence of the first full paragraph, beginning “At oral argument” is deleted and the following sentence and footnote are inserted in its place, which will require the renumbering of subsequent footnotes:

Appellate counsel acknowledged this problem at oral argument and abandoned his contention that trial counsel was ineffective in failing to urge conviction for a nonexistent crime.<sup>2</sup>

2. Footnote 2, added in item No. 1, *ante*, reads as follows:

Counsel followed this concession with the statement that “the prosecution could have asked for an aggravated assault as an alternative ....” In a petition for rehearing, counsel appears to suggest that

defense counsel should have requested instruction on aggravated assault. We will not address these late and undeveloped contentions. (See *People v. Lewis* (2008) 43 Cal.4th 415, 536, fn. 30 [argument made for first time in reply brief]; *Akins v. State of California* (1998) 61 Cal.App.4th 1, 50 [argument with no authority in support may be treated as waived].)

There is no change in the judgment. Appellant's petition for rehearing is denied.

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DAWSON, J.

WE CONCUR:

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LEVY, Acting P.J.

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GOMES, J.